

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3733 OF 1992.

Babulal Lalchand Banbheru : Petitioner

versus

State of Maharashtra & ors. : Respondents.

Mr.P.S.Dani for the petitioner.

Mr.V.S.Gokhale, AGP, for the Respondent Nos.1 to
3.

Mr.P.N.Joshi for Respondent Nos. 4 to 13.

CORAM : D.G.DESHPANDE, J.

DATED : September 15, 2006.

ORAL ORDER

1. Heard the learned advocate Mr.Dani appearing for the petitioner and learned advocate Mr.Joshi, appearing for the Respondent Nos. 4 to 13. The petitioner is a certified debtor under

the Maharashtra Debt Relief Act, 1975. He had placed certain ornaments with the contesting respondent Nos. 3 to 14. Proceedings were started for recovery. The Tahasildar has given findings in favour of the petitioner/debtor. That order came to be challenged and the Respondents/creditors were directed to pay an amount of Rs.48,000/- and odd to the petitioner. Against that order since there was no appeal provided, the creditors filed writ petition. Original creditor died. His Legal Heirs filed an application for bringing themselves on record in that writ petition. That petition was rejected and petition stood abated. Result was that the order against original creditor remain to be enforced. In the mean time the creditor filed an appeal before the Sub-Divisional Officer under which provision of law could not be ascertained by the petitioner. The Sub-Divisional Officer granted stay to the recovery proceedings. The petitioner thereafter filed this petition against the order of the Sub-Divisional Officer and order of the Sub-Divisional Officer was stayed on 7.9.1992. The order is "Rule, interim relief in terms of prayer (c) and (d)" The prayers (c) and (d) are as under :-

+(c). pending the hearing and final disposal of this Petition, execution and implementation of the order dated 23rd May 1992 passed by Respondent No.2 herein granting stay to the execution of auction sale in pursuance to the notice dated 23rd April 1992 be suspended;

(d). pending the hearing and final disposal of this Petition, Respondent No.3 Tahsildar, Mandgaon, be directed to proceed with and implement the notice dated 23rd April 1992, Exhibit 'J' to the Petition"

2. In this regard what transpired today is that even though the Sub-Divisional Officer had stayed the proceedings of recovery of the amount from the creditor. That order of the Sub-Divisional Officer itself has been stayed by this Court which means that the proceedings for recovery of the amount in consequence of payment to the petitioner were to go on. Therefore, the interim order granted in this petition has actually served the purpose of the petitioner.

Nothing survives in this petition. It is disposed of. It is clarified that if the Sub-Divisional Officer has recovered some amount that should be paid to the petitioner. If nothing is recovered, that should be recovered with interest and costs and should be paid to the petitioner.

[D.G.DESHPANDE, J.]